

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

**IAM LOCAL LODGE 851
(Caterpillar)**

and

**Case Nos. 13-CB-101376
13-CB-101664
13-CB-103799**

MARK JONES, an individual

R. Jason Patterson Esq., Counsel
for the General Counsel
John Scully Esq., and *Aaron Solem Esq.*,
Counsel for the Charging Party
William H. Haller Esq., Counsel for the
Union

DECISION

Statement of the Case

Raymond P. Green, Administrative Law Judge. I heard these consolidated cases on August 21, 2013, in Chicago, Illinois. The charges were filed on March 28, April 1 and April 26, 2013. The Complaint, which was issued on June 28, 2013 alleges as follows:

1. That from May 1 to August 17, 2012, the Union established at picket line at the Employer's facility.

2. That at the end of June 2012, the Union by Tim O'Brien, at the picket line, misled employees that there would no financial or other repercussions by the Union if employees crossed the picket line.

3. That in July or August 2012, O'Brien, by telephone, misled employees that there would only be nominal financial consequences if they crossed the picket line.

4. That on or about October 12, 2012, the Union notified employees Jones, Roland and Jackson that they would be brought up on charges for crossing the picket line.

5. That on November 28, 2012, the Respondent imposed fines on the aforesaid employees because they crossed the Union's picket line and returned to work. The fines were

Darrell Roland	\$15,564.00
Mark Jones	\$11,938.00
Jarius Jackson	\$21,558.00

6. That the fine on Jones was imposed notwithstanding the fact that he had tendered his resignation from the Union before returning to work.

7. That the fines on Roland and Jackson were imposed notwithstanding assurances given to them by O'Brien that there would be either minimal or no financial consequences if they crossed the picket line.

At the hearing the General Counsel informed me that the charge in 13-CA-101664 had been withdrawn by Darrell Roland and therefore the General Counsel was amending the Consolidated Complaint to delete all allegations relating to Roland and to delete these from the proceedings. Although no explanation was given, I granted this Motion.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed,¹ I make the following

Findings and Conclusions

I. Jurisdiction

It is admitted and I find that the company having a contract with the Union is an employer engaged in commerce within the meaning of Section 2(1), (6) and (7) of the Act. It also is admitted and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practice

The Union has had a collective bargaining relationship with Caterpillar for many years. In 2012, they were engaged in negotiations for a new collective bargaining agreement during which the company was demanding concessions. In or about April 2012, the employees represented by the Union, (numbering around 700), voted to engage in a strike. Thereafter, a strike commenced on May 1 and a picket line was established at the company's facility. In relation to the strike, the employees were offered strike benefits of about \$100 per week if they assisted the Union by engaging in strike or picket line related functions. This was announced at meetings that the Union had with employees prior to the commencement of the strike.

At a number of meetings that the Union held with its members between May and August, employees were told that if they returned to work, they would be subject to fines. However, the extent of any fines had not yet been determined and would not be determined until after the strike was over. In the meantime, a number of the employees abandoned the strike and returned to work.

As it turned out the strike, from the Union's point of view, was not successful and the members voted to return to work on August 17, 2012.

Subsequent to the strike, a committee was chosen to hear charges against those union members who crossed the picket line and to determine the amount of fines to be levied against them. Basically, they decided to fine non-stewards about 60% of the amount earned after returning to work and a higher percentage for shop stewards who abandoned the strike. The initial amounts were quite high. Darrell Roland was fined \$15,564.00, Mark Jones was fined

¹ Although the Respondent's Brief was electronically filed about three hours after the the deadline, I read the Brief before the General Counsel filed a motion to strike it. I cannot undo what has already been done, and I am exercising my discretion in permitting its receipt.

\$11,938.00 and Jarius Jackson was fined \$21,558.00. Other union members who returned to work received fines that were lower and higher than the three persons involved in this case.

5 Ultimately, however, by edict of the International Union, all of the fines were reduced by about 90%.

10 Jackson was a relatively newly hired employee. He did not attend the union's meeting where the strike vote was taken and the employees were told that after two weeks there would be strike benefits. In fact, Jackson chose not to attend any of the union's meetings or to engage in any strike activity. He claims that he was not aware that the Union was offering weekly strike benefits.

15 Jackson testified that in May, because he was short of money, he called the Union's telephone number and spoke to O'Brien who answered the phone. (He had never met O'Brien before.) Jackson testified that they discussed the strike and the status of the negotiations. According to Jackson, O'Brien told him that it was important for everyone to stick together and that O'Brien tried to persuade him to support the union.

20 According to Jackson, in or about June, 2012, he again called the union's office. He states that O'Brien answered the phone whereupon he asked O'Brien what the consequences would be if he crossed the picket line. Jackson asserts that O'Brien said that he could get fined and that the Union would not represent him in the future. When asked how much, Jackson claims that O'Brien told him about a \$100 to \$200.

25 O'Brien, who is also an employee at the plant, denies having had any such conversation with Jackson. He states that during the strike, the Union had not even made any decisions as to how much to fine strike breakers; that being made by a committee established after the strike was over. O'Brien also testified that he usually does not even answer the phone; this being done by a clerical employee in the union's office.

30 A substantially similar claim apparently was made by Darrell Roland and this led to the issuance of a Complaint based on his charge. However, Roland withdrew his claim and the General Counsel did not call him as a witness. And although I am not going to second guess why Roland withdrew his charge, the fact remains that the only person who could have corroborated Jackson's account, (by testifying to a similar transaction with O'Brien), was not called as a witness.

40 Mark Jones testified that before working for Caterpillar and joining the Union, he had worked for other companies where he had been either a committee member or an agent of an SEIU or Teamster local. Therefore, his testimony was that he had knowledge of union affairs and was aware that in order to avoid a potential fine for crossing a picket line, he had to resign his membership before doing so.

45 According to Jones, he typed out a letter dated June 17, 2012 which he mailed via the US Postal Service to the local union's address at 23157 Thomas Dillon Drive, Channahon, Illinois 60410. The letter, which he claims was mailed about two days later, states:

50 To the Executive board of IAM Lodge 851, I Mark J. Jones hereby immediately withdraws my membership from the above mentioned union and all of its affiliates. I would like to contribute to the Political Action Fund if the Local union by-laws and constitution so allow.

One might think that since Jones, because of his prior union involvement, who knew that he needed to resign before returning to work, would have made certain that he had proof that the letter was at least sent, if not received. But despite the availability by the Postal Service of inexpensive tracking or certified mail, Jones did not avail himself of either of these services.

In relation to this letter, O'Brien testified that before the committee hearing was held in November 2012 to determine Jones' fine, he never saw any letter indicating Jones' intention to resign from the Union. O'Brien testified that he searched the union's office and could not find any such letter.

According to Jones, he also handed a copy of the letter to shop steward Flores at the picket line. He testified that he told Flores that he was resigning from the union before returning to work and that Flores responded by saying that he didn't think that a person, once a member, could resign. According to Jones, he told Flores that this was incorrect and that Flores could check with the National Labor Relations Board. Jones testified that he did not want to get into an argument with Flores and that Flores took the letter, crumpled it up and threw it into a garbage pail. Flores testified that he never had this conversation with Jones and in my opinion he was the more credible of the two.

On or about October 12, 2012, the Union sent out a letter to Jones and to the other people who crossed the picket line, notifying them that under Article L of the IAM constitution a trial date had been set for November 9, 2012. Notwithstanding receipt of this letter, Jones did not respond with a letter of his own, advising the Union that he had sent a letter dated June 17 tendering his resignation. Instead, he did nothing until he showed up at the hearing.

The evidence shows that on November 9, 2012, Jones attended the hearing and claimed that he had sent in a resignation letter on June 17. He tendered a copy of the letter that also had his writing on it. The Trial Committee did not believe Jones and on November 28, the union sent him a letter advising him that he was fined \$11,938 and that he would not be eligible to hold any union office for a period of five years. As noted previously, that fine was substantially reduced at a later date.

III. Analysis

There is no argument that if I conclude that Jones resigned from the Union before he abandoned the strike, then the imposition of the fine would violate Section 8(b)(1)(A) of the Act. *Scofield v. NLRB*, 394 U.S. 423 (1969); *Pattern Makers v. NLRB*, 473 U.S. 95 (1985).

The question here is whether or not Jones actually sent a letter of resignation before he returned to work.

The General Counsel correctly points out that there is a presumption of delivery when a letter is put in the mail. *Pattern Makers (Michigan Model Mfrs.)*, 310 NLRB 929 (1993). But this presumption can only be used if the trier of fact credits the person who testifies that he put the letter in the mail.

In my opinion, Jones testimony was not believable. As noted above, he claimed to be familiar with and knowledgeable about union procedures and the legal requirement that he resign his union membership before returning to work. And yet he admittedly took no steps to insure that he could later prove that he mailed the letter. This would have been simple and inexpensive. And given the possibility of being faced with a large fine, I find it incredible that Jones would not have taken even the most minimal steps to insure that he had proof that his

letter was sent and/or delivered. I also credit the testimony of Shop Steward Flores who denied that he was handed a copy of the letter by Jones.

As to Jackson, I do not credit his testimony that union president O'Brien told him that if he returned to work, he would face a fine of only \$100 to \$200. For one thing, I credit the testimony that the Union, at the time of these alleged conversations, had not yet determined how much the fines would be. For another, I thought that O'Brien was a credible witness who denied the assertion made by Jackson. Finally, I can see no rational basis upon which O'Brien, who was trying to rally his members to support the strike, would tell a potential strike breaker that if he crossed the picket line, the consequences to him would be minimal. I also note that Jackson's testimony was not corroborated by Darrell Roland who, in a similar charge, claimed that he too was told the same thing by O'Brien.

Conclusion

For the reasons stated above, I conclude that the Complaint should be dismissed.

Dated: Washington, DC November 12, 2013

Raymond P. Green
Administrative Law Judge